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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN				STERRETT, JONATHAN G
12400 WILSHIRE BOULEVARD				ART UNIT
SEVENTH FLOOR				PAPER NUMBER
LOS ANGELES, CA 90025-1030				3623

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/823,421	CONNELLY, JAY H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. This **Final Office Action** is responsive to applicant's amendment filed February 27, 2006. Applicant's amendment of February 27, 2006 amended **Claim 1, 14 and 23**. Currently **Claims 1-27** are pending.

### ***Response to Arguments***

2. Applicant's arguments filed on February 27, 2006 have been fully considered but they are not persuasive.

3. The applicant argues that Gerace '396 does not provide feedback data that includes a predictive rating of the broadcast product and that hits and click-throughs are not a predictive rating.

The examiner respectfully disagrees. Gerace '396's use of hits and click-throughs are in fact feedback data that provides a prediction because the invention of Gerace '396 uses those hits and click-throughs to determine what the user is likely to hit and click-through in the future. This determination is a prediction, based on the hits and click-throughs, of what items the user is likely to want to see in the future. The user viewing history object of Gerace uses this information and stores it. The information gathered is transparent to the user, because it is not readily apparent to the user that this information is being gathered.

4. The applicant argues that Gerace 735 and Gerace 396 do not teach “a predictive rating of a broadcast product to predict an interest level of the user in the broadcast product based on the information about the user’s interest in other broadcast products.

The examiner respectfully disagrees.

Gerace 396 teaches that the feedback of what the user is looking at, the types of articles and advertisements is used to determine what articles and advertisements the user is likely to want to see in the future. Articles and advertisements to appear before the user are screened based on what the user has seen in the past. The prediction is based on the number of hits and click-throughs, which are a type of predictive rating, in that they predict what a user will hit and click-through of items in the future. For example, if a user was a sports fanatic and had no interest in stock listings, then Gerace’s invention would submit articles and advertisements to that user that were sports-related, rather than show agate information that discussed an M&A’s effect on gasoline prices in the Midwest. Gerace’s invention is predicting that the user will continually be interested in sports in the future, if all they have looked at in the past were the Washington Senator’s standings in the national league or similar sports-related information. Gerace’s invention uses this prediction to send broadcast information (i.e. products) to the user based on their viewing history. So the viewing history (i.e. those hits and click-throughs) contains a predictive rating of what kind of information they will desire in the future. The prediction is based on

the user's interest in other broadcast products, because the user's viewing history is used to determine what future products will be shown to the user.

5. The applicant argues that the information is not stored in a memory device of the clients, as taught by Gerace, however this is moot in view of new grounds of rejection below. The examiner notes that the rejection of Claim 1 now uses Abelow, since Abelow teaches feedback information being stored in a memory device of the clients. Abelow and Gerace both address using feedback from customers and thus both are analogous art.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-3, 10-16 and 20-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace US 5,848,396 in view of Abelow US 5,999,908.

Regarding Claim 1, Gerace teaches:

**receiving a request to obtain consumer feedback on a broadcast product**

column 12 line 59-60, sponsors of advertisements can obtain reports through requesting them, advertisements are a type of broadcast product.

**sending at least one product description data to a plurality of clients**

column 12 line 7-10, ad package object comprises product description data; column 8 line 13-16, ads are displayed on webpages of a plurality of clients;

**receiving a feedback data on the broadcast product from each of the plurality of clients transparent to the user of the clients**

column 12 line 57-63, computer subroutine, transparent to user, records successful use of advertisements (ads are a type of broadcast product), including hits and click-throughs;

**wherein the feedback data includes a predictive rating of the broadcast product to predict an interest level of the user in the broadcast product based on information about the user's interest in other broadcast products.**

Column 12 line 19-21, hits and click-through's provide a predictive rating of the user based on the number of times they hit and clicked through various items. – see figure 3G for the user viewing history that stores the user viewing history

Column 2 line 30-35, the user's viewing habits form a profile that is used to predict what over types of ads and information they are likely to want to see in the future – i.e. a prediction is formed based on the feedback data.

**and the information is stored in a memory device;**

Column 7 line 19-21, the user viewing history is stored (i.e. recorded by the user viewing history object) – see also column 6 line 5-10.

Column 6 line 45-50, the objects storing the user viewing history are activated when a computer user logs on – see Figure 2 #73 and Figure 3A #27, the examiner interprets the storage of the user viewing history object to be running on the web server where the viewing history information is stored on the server.

**processing a consumer feedback summary based on the feedback data on the broadcast product**

column 13 line 9-11, Demographic Response Rate Report for advertisements (ads are a type of broadcast product).

Gerace does not teach where the feedback data is stored on a memory device of each of the clients, but rather is stored on the server that is monitoring the user viewing history.

Abelow teaches where feedback data from each of the clients is stored in a memory device of each of the clients (see column 2 line 59-61) and where this data is uploaded periodically.

Abelow teaches that having the memory device in each of the clients enables each device to be stand-alone and only requires periodic connection to the network for uploads and downloads (column 21 line 60-65).

Both Abelow and Gerace address obtaining customer feedback to improve services and products provided to customers, thus both Abelow and Gerace are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Abelow, regarding obtaining customer feedback, to include the step where the feedback was stored in a memory device of each of the clients, because it would the device of the clients to be stand-alone and only require periodic connection to the network.

Regarding **Claim 2**, Gerace teaches:

**communicating the consumer feedback summary to a product provider of the broadcast product**

column 18 line 51-53, sponsor request for report causes reporting subroutine to communicate the report back to the sponsor (sponsor of the advertisement; ads are a type of broadcast product).

Regarding **Claim 3**, Gerace teaches:

**wherein the request to obtain consumer feedback is received from a product provider of the broadcast product.**

column 12 line 7-9, sponsors have ad packages which can be for products, services or any other information found in advertisements (as noted above the ads themselves are a type of broadcast product).

Regarding **Claim 10**, Gerace teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more ways of marketing a product.**

column 19 line 48-50, sponsor can create a customized report to follow success of advertisement; column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 11**, Gerace teaches:

**wherein the consumer feedback summary comprises a marketing success comparison data**

column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 12**, Gerace teaches:

**wherein the product description data comprises meta-data**

column 12 line 28-32, profile information in ad series object comprises metadata.

Regarding **Claim 13**, Gerace teaches:

**the product description data comprises program guide information**

column 22 line 43-52, media and TV schedule information comprises

program guide information.

**Claims 14-16 and 20-27** recite similar limitations as those recited in

**Claims 1-3 and 10-13** above, and are therefore rejected under the same

rationale.

Regarding **Claim 14**, Gerace teaches all the limitations above in Claim 1,

and also teaches a broadcast center server (i.e. web server – see Figure 2 #27

and column 4 line 45-50 regarding operation of the web server).

8. **Claims 4-9 and 17-19** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Gerace US 5,991,735 in view of Abelow US 5,999,908.

Regarding **Claim 4**, Gerace teaches obtaining customer feedback  
transparent to the user regarding advertisements.

Gerace doesn't teach:

**wherein the request to obtain consumer feedback comprises a request to test the success of one or more products.**

Abelow does teach:

**wherein the request to obtain consumer feedback comprises a request to test the success of one or more products**

column 9 line 38-39, module obtains findings during the course of product uses; column 19 line 54-56, automatic findings from field trials for product uses; column 33 line 3; module can obtain data from passive interactions, where the user is unaware that data is being gathered on their use of product; column 38 line 61-67, product performance may be passively gathered without the customer's involvement; column 18 line 24-26, customer feedback addresses success of product while in use.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes arising from use of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a request to test the success of one or more products, as taught by Abelow, because it would provide strategic

advantage to vendors of products by providing immediate feedback from customers while a product was being used.

Regarding **Claim 5**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

(column 13 line 11-12, ad success data used in regression).

Gerace does not teach:

**wherein the consumer feedback summary comprises a product success data for each of the one or more products.**

Abelow teaches:

**wherein the consumer feedback summary comprises a product success data for each of the one or more products**  
column 18 line 67 – column 19 line 3, vendors can apply module to all of the products in a particular market to obtain feedback regarding success and failure of product in that market to better tailor products for that market; column 25 line 20-23, digital data capturing customer interactions is transmitted back to vendor's computer; column 55 line 15-19, reports of customer feedback quantitative information is presented in a way that is easily understood.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customer's likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a product success data for each of the one or more products, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used.

Regarding **Claim 6**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product.

Abelow teaches:

**wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product**  
column 38 line 17-12, data gathered on features that customers use.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with **wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product**, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used.

Regarding **Claim 7**, Gerace teaches:  
**obtaining advertisement success data regarding how advertisements were viewed**  
column 13 line 11-12, ad success data used in regression.

Gerace does not teach:  
**wherein the consumer feedback summary comprises an attribute success comparison data.**

Abelow teaches:

**wherein the consumer feedback summary comprises an attribute**

**success comparison data**

column 42 line 33-35, benchmarking probes capture data what the customers like about the product while using it, including that of various attributes of the product; column 55 line 30-36, various reports are available including graphs which provide ability to compare the success data.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the consumer feedback summary comprises an attribute success comparison data, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used, where the feedback provided ability to compare the success of various attributes of the product.

Regarding **Claim 8**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements  
were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

**wherein the request to obtain consumer feedback comprises a  
request to compare the success of two or more products.**

Abelow teaches:

**wherein the request to obtain consumer feedback comprises a  
request to compare the success of two or more products.**

column 42 line 20-24, benchmark probes solicit customer feedback  
regarding competing products.

Abelow teaches that providing feedback while a product is in use is of  
strategic competitive advantage since it enables vendors to immediately  
understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of  
the invention to modify the teachings of Gerace, as discussed above, with  
**wherein the request to obtain consumer feedback comprises a request to  
compare the success of two or more products, as taught by Abelow, because it  
would provide strategic advantage to vendors of products by providing immediate**

feedback from customers while products were being used, where the feedback provides the ability to understand the success of two or more products in the marketplace.

Regarding **Claim 9**, Gerace teaches:

**obtaining advertisement success data regarding how advertisements were viewed**

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

**wherein the consumer feedback summary comprises a product success comparison data.**

Abelow teaches:

**wherein the consumer feedback summary comprises a product success comparison data**

column 9 line 38-39, module obtains findings in the middle of product uses; column 19 line 54-56, automate findings from field trials for product uses; column 33 line 3; module can obtain data from passive interactions, where the user is unaware that data is being gathered on them; column 38 line 61-67, product performance may be passively gathered without the customer's involvement; column 18 line 24-26, customer feedback addresses success of product while in use; column 55 line 15-29, customer based product design

reports presents quantitative information in a way that is easily understood by the customer, including graphs and charts where comparisons can easily be made.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the consumer feedback summary comprises a product success comparison data, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used, where the feedback provides the ability to compare the success of a product in the marketplace.

**Claims 17-19** recite similar limitations as those recited in **Claims 4-9** above, and are therefore rejected under the same rationale.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is (571) 272-6881. The examiner can normally be reached on Monday-Friday, 8:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS  
5-7-2006

  
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